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AUG 22 2003

OFFICE OF PETITIONS

In re Application of	:
Bruce K. Martin, Jr. et al	:
Application No. 09/904,010	: DECISION ON PETITION
Filed: July 11, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 3399P042	:

This is a decision on the petition, filed May 14, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on July 10, 2002. A review of the file record discloses that a Notice to Rescind was received in the USPTO on June 12, 2002.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the instant application, a notice to rescind was filed prior to the filing date of a counterpart application in an eighteen

month publication country. Therefore, since receipt in the USPTO of the request to rescind prior to the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned, for the reason stated above, the petition fee of \$1,300 is being credited to Deposit Account No. 02-2666 as authorized.

This application is being forwarded to Technology Center 2131 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.



Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND				
1 Date of Request: <u>8-22-03</u>		2 Serial/Patent # <u>09/904010</u>		
3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT	
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<input checked="" type="checkbox"/> Petition	14	3/14/03	\$ 1200	
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<input checked="" type="checkbox"/> No Fee Due (Explanation):	<div style="border: 1px solid black; min-height: 40px; margin-top: 5px;"> <i>Ref unnecessary since case is not regarded as abandoned.</i> </div>			
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